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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 06 117 54084 Office: NEBRASKA SERVICE CENTER Date: SEP 07 2007

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. On the uncertified Form ETA 750B, the petitioner lists his current employment as a research assistant professor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. Significantly, the new evidence consists of far more persuasive evidence of the petitioner's citation record for his articles published in China. For the reasons discussed below, we are persuaded that the petitioner has demonstrated that a waiver of the alien employment certification process is warranted in the national interest in this matter.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Material Sciences and Engineering from the Institute of Metal Research, Chinese Academy of Sciences issued in 1999. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm. 1998)[hereinafter "NYSDOT"], has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, computer simulations of materials processing, and that the proposed benefits of his work, increasing the process efficiency and reducing the development cost for manufactured products, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the

national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner obtained his Ph.D. in Material Sciences and Engineering from the Institute of Metal Research, Chinese Academy of Sciences in 1999. In 2001, the petitioner joined the Thermal Process Technology Center at the Illinois Institute of Technology (IIT) under the direction of [redacted]

Before entering the United States, the petitioner authored six articles, received a third place paper award at the 11th Conference of Youth Scientific Report and received a second place Science and Technology Progress Award for his work on homogenized specific alloy research. The petitioner's articles published in China have been moderately cited. The petitioner has presented some of the results of his research in the United States, but much of it is on behalf of private companies with proprietary interests in his research. The record contains no evidence that the petitioner is listed as an inventor on any patent or patent application. Nevertheless, the record contains project proposals and summaries listing him as the senior research associate and even co-principal investigator. These proposals and summaries support [redacted]'s attestations as to the petitioner's significant role in his projects in the United States.

[redacted] an associate professor at the Institute of Metal Research when the petitioner obtained his Ph.D. at this institution, discusses the petitioner's work there. Specifically, the petitioner developed software to model aluminum casting. This work contributed to the group receiving the second place Science and Technology Progress Award. [redacted] confirms that the group still uses the petitioner's models. On appeal, the petitioner has now submitted several articles that cite his own articles published in China.

[redacted] asserts that the petitioner's unique experience using complex material testing was vital to his project predicting the mechanical behavior of a part during laser cladding by computer simulation. [redacted], a retired research associate with Amoco, affirms the petitioner's experience with "DSC, microscopy analysis techniques and other multi-disciplinary tools." Simple training in advanced technology or unusual knowledge, however, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. Dr. Nash concludes that the petitioner's simulation of laser cladding "will provide the basis for optimizing the laser cladding process[,] providing significant economic benefits for those industries

utilizing this process." While this statement is inherently speculative, the record contains more specific discussions of the petitioner's accomplishments.

[redacted] further asserts that the petitioner played "a critical role" on projects sponsored by major industry names such as Dana, Northrup-Grumman and Alcoa. The record contains a project report prepared for [redacted], a chief engineer at Dana who has confirmed the petitioner's role on this project; a project summary for Northrup-Grumman listing [redacted] as the principal investigator and the petitioner as the senior research associate; and a project proposal for Northrup-Grumman listing the petitioner as a co-principal investigator [redacted] specifically discusses the project sponsored by Dana, a leading supplier of automotive parts. For this project, the petitioner "developed a material diffusion simulation package using Finite Difference Method for heat treatment simulation" that reduces costs and scrap rates. [redacted] asserts that Dana has adopted this package to control their process design.

[redacted] confirms that Dana has "applied one of [the petitioner's] programs into our process design on carburization." Through accurate predictions of the carbon profile inside the material and the properties of the parts, the petitioner's application saves Dana "energy, reduces cycle times and cost."

[redacted], President of The Herring Group, asserts that he knows the petitioner to be "a key researcher" in [redacted] group. [redacted] asserts that the petitioner has developed models that accurately predict the carbon profile in steel and the temperature field in the low pressure or vacuum carburization furnaces. [redacted] concludes that the models would not be as advanced without the petitioner's contributions and concludes that the models, which save time, conserve energy and lower overall manufacturing costs, are invaluable to U.S. industry.

[redacted] asserts that while he has not worked with the petitioner, he knows the petitioner personally through his "ongoing associations with IIT." [redacted] asserts:

> One most important and significant improvement [the petitioner] brought to the field is elevated temperature mechanical property measurement for different materials, including steel and aluminum, using the Gleeble 3500. He developed the different material property data at various high temperatures for HSLA-100. This steel is a low alloy high strength steel, and is commonly used in ship construction and for armor plate. He proved that each phase in the steel had a different mechanical behavior that varied with changing temperature. He then used these data in a computer simulation of a welding process. Furthermore, the phenomena occurring in the molten pool were studied by [the petitioner]. This work and these results were of direct and significant benefit to the US defense effort and would have great industrial value, as well.

As stated above, the record contains an August 24, 2004 Request for Review and Approval of Proposal listing [redacted] and the petitioner as co-principal investigators. The proposal involves the simulation of welding two thick steel plates, HSLA 100 and DH36, using Gleeble 3500 thermo-

mechanical simulation equipment. In response to the director's request for additional evidence, the petitioner submitted a January 31, 2005 report prepared by the petitioner on this subject.

[redacted], a Fellow of the Los Alamos National Laboratory, the American Society for Metals and the Mineral, Metals and Materials Society as well as a member of the U.S. National Academy of Engineering, praises the petitioner's work and asserts that the data he obtained regarding material properties at temperature close to melting is being used by both Northrup-Grumman and Dana.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the materials science community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.